

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

OLIVIA Y., *et al.*

PLAINTIFFS

v.

CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi, *et al.*

DEFENDANTS

**JOINT MOTION FOR FINAL APPROVAL OF STIPULATED SETTLEMENT
AGREEMENT**

The parties jointly move this Court pursuant to Fed. R. Civ. P. 23(e) for final approval of the proposed Stipulated Settlement Agreement, which this Court preliminarily approved by Order dated April 3, 2007. A true and correct copy of the proposed Settlement Agreement is attached as Exhibit 1.

1. On March 11, 2005, the Court certified this case seeking declaratory and injunctive relief for class action treatment pursuant to Fed. R. Civ. P. 23(b)(2). The proposed settlement provides that Defendants do not contest that the constitutional substantive due process rights of the Plaintiff Class have been violated, and that the parties agree to move directly to the remedial phase of the litigation, in which the parties shall attempt to agree on a comprehensive reform plan that will remedy the class-wide constitutional violations. If the parties cannot agree on a remedial plan, the parties shall proceed to a trial as to the scope of the necessary remedy. As the proposed settlement contemplates class-wide

relief, Rule 23(e)(1)(A) requires the Court's approval of the agreement if, after a hearing, the Court concludes that the terms of the settlement are "fair, reasonable, and adequate" from the perspective of absent class members. *See generally, Manual for Complex Litigation (Fourth)* § 21.63 (2004) (attached as Exhibit 2).

2. On April 3, 2007, the Court granted preliminary approval of the proposed settlement and directed the Defendants to provide notice to class members and other interested persons. As evidenced by the certification filed with the Court on April 18, 2007, Defendants have complied with the Court's direction regarding notice. The distribution of notice is further evidenced by the various comments and objections submitted on behalf of class members or other interested parties that were filed in accordance with the directions set forth in the class notice. A compilation of those letters is attached as Exhibit 3. None of the comments or objections attacked or addressed the form of notice or the reasonableness of the manner of notification. The requirements of Fed. R. Civ. P. 23(e)(1)(B) have thereby been satisfied.
3. The proposed settlement follows three years of litigation which involved extensive discovery, two motions to dismiss, and which culminated in cross motions for summary judgment. The proposed settlement was reached only after the denial of the cross motions for summary judgment, and following five months of arm's length bargaining. The vigorous manner in which the parties litigated this case, and the time and effort

involved in reaching the proposed settlement amply demonstrates the absence of fraud or collusion between the parties in reaching this agreement.

4. All of the letters submitted in response to the class notice recognize a need to reform Mississippi's foster care system, and they are overwhelmingly in favor of the proposed Stipulated Settlement as the means of resolving the litigation and achieving that necessary reform. The two objections submitted in response to the notice are not from class members, and reflect a misunderstanding as to either the scope of the litigation, or the terms of the proposed settlement. Not a single class member has asserted that the proposed settlement fails to satisfy the requirements for approval as specified in Rule 23(e)(1).
5. The proposed settlement is fair, reasonable and adequate. The projected month-long trial would have been expensive and, assuming an appeal, the proceedings would be extremely time-consuming. The litigation has reached a stage where both parties and this Court are well positioned to evaluate the terms of the proposed agreement. While Plaintiffs developed a strong factual basis for their claims, securing a liability ruling at trial or on appeal was in no manner preordained, and the cost, time and possible risk of litigation, all weigh in favor of the proposed settlement, which moves the parties directly to the remedial phase of the case. Class counsel, all of whom have substantial experience litigating complex federal class actions, strongly support the proposed settlement, and there

have been no objections by either class representatives, or absent members. *See Ayers v. Thompson*, 358 F.3d 356, 368-69 (5th Cir. 2004) (listing factors that guide approval of class action settlements).

WHEREFORE, the parties jointly move that the Court, after conducting the hearing required by Fed. R. Civ. P. 23(e)(1)(C), enter its findings and conclusions supporting approval of the proposed Stipulated Settlement and grant its approval.

Respectfully submitted, this 14th day of May, 2007.

/s Eric Thompson

Marcia Robinson Lowry (MBN 43991 *pro hac vice*)
Eric E. Thompson (MBN 43993 *pro hac vice*)
Shirim Nothenberg (MBN 43990 *pro hac vice*)
CHILDREN'S RIGHTS
330 7th Avenue, 4th floor
New York, New York 10001
Telephone: (212) 683-2210

W. Wayne Drinkwater, Jr. (MBN 6193)
Melody McAnally (MBN 101236)
BRADLEY ARANT ROSE & WHITE LLP
188 East Capitol Street, Suite 450
Jackson, Mississippi 39201
Telephone: (601) 948-8000
Facsimile: (601) 948-3000

Stephen H. Leech (MBN 1173)
618 Crescent Boulevard, Suite 103
Ridgeland, MS 39157
P. O. Box 3623
Jackson, Mississippi 39207
Telephone: (601) 607-4172

John Lang (MBN 43987 *pro hac vice*)
Christian Carbone (MBN 43986 *pro hac vice*)
John Piskora (MBN 44474 *pro hac vice*)
LOEB & LOEB LLP

345 Park Ave.
New York, New York 10154
Telephone: (212) 407-4000

PLAINTIFFS' COUNSEL

/s Dewitt L. ("Rusty") Fortenberry, Jr.
Dewitt L. ("Rusty") Fortenberry, Jr. (MSB # 5435)
Gretchen L. Zmitrovich (MSB #101470)
Ashley Tullos Young (MSB #101839)
Kenya Key Rachal (MSB #99227)
Barry C. Campbell (MSB #99535)
BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, PC
4268 I-55 North
Meadowbrook Office Park
P.O. Box 14167
Jackson, Mississippi 39211
Telephone: (601) 351-2400
Facsimile: (601) 351-2424

Harold E. Pizzetta, III, Esq.
Assistant Attorney General
General Civil Division
Carroll Gartin Justice Building
430 High Street
Jackson, Mississippi 39201

*ATTORNEYS FOR DEFENDANTS HALEY
BARBOUR, ET AL.*